

(PROCEEDINGS COMMENCED AT 3:25 P.M.)

THE CLERK: Criminal Case No. 17-648, United States of America versus Angel De La Cruz for Change of Plea Hearing.

On behalf of the Government, Assistant United States Attorney Sean R. Gajewski.

On behalf of the Defendant, Assistant Federal Public Defender Yasmin A. Irizarry.

Defendant is present and assisted by the certified court interpreter.

MR. GAJEWSKI: Good afternoon, Your Honor. The Government is ready to proceed.

MS. IRIZARRY: Good afternoon, Your Honor. Yasmin Irizarry on behalf of the Defendant. We are ready to proceed.

Excuse me, Your Honor. I misread the hour of the hearing. I thought it was at 3:30, so I apologize to the Court for being late.

THE COURT: Is this a straight plea?

MS. IRIZARRY: Yes, Your Honor.

THE COURT: To all three counts?

MS. IRIZARRY: Yes, Your Honor.

THE COURT: Please put Mr. De La Cruz under oath.

THE CLERK: Yes, Your Honor.

Joe Reynosa, CSR, RPR
Official Court Reporter

ANGEL A. MONTERO-DE LA CRUZ,

after having been first duly
sworn or affirmed upon oath, was examined
and testified as follows:

THE COURT: Mr. De La Cruz, before I accept your
petition to enter a plea of guilty, I have to determine that
you are competent to make your plea and that your petition is
completely voluntary.

Do you understand that?

DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

THE COURT: Do you understand that you are now
under oath?

DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

THE COURT: If you answer any of my questions
falsely, your answers may later be used against you in a
prosecution for perjury or for making a false statement.

Do you understand that?

DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

THE COURT: Mr. De La Cruz, please state your full
name.

DEFENDANT MONTERO-DE LA CRUZ: Angel Alberto
Montero-De La Cruz.

THE COURT: So your last name is Montero?

DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

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1 THE COURT: How old are you, sir?

2 DEFENDANT MONTERO-DE LA CRUZ: 27 years old.

3 THE COURT: And how far did you go in school?

4 DEFENDANT MONTERO-DE LA CRUZ: I studied until high
5 school, and then I took some courses at Universidad Central
6 del Este.

7 THE COURT: Is that here in Puerto Rico?

8 DEFENDANT MONTERO-DE LA CRUZ: No, sir. In the
9 Dominican Republic.

10 THE COURT: Have you been treated recently for any
11 type of mental illness?

12 DEFENDANT MONTERO-DE LA CRUZ: No, sir.

13 THE COURT: Have you been treated recently for
14 addiction to any type of narcotic drug?

15 DEFENDANT MONTERO-DE LA CRUZ: No, sir.

16 THE COURT: Are you currently under the influence
17 of any type of narcotic drug?

18 DEFENDANT MONTERO-DE LA CRUZ: No, sir.

19 THE COURT: Are you currently taking any type of
20 medication?

21 DEFENDANT MONTERO-DE LA CRUZ: No.

22 THE COURT: Are you currently under the influence
23 or have you drunk any alcoholic beverage within the last
24 24 hours?

25 DEFENDANT MONTERO-DE LA CRUZ: No, sir.

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Official Court Reporter

1 THE COURT: Mr. Montero, what is it that you want
2 do in court this afternoon?

3 DEFENDANT MONTERO-DE LA CRUZ: To plead guilty.

4 THE COURT: Ms. Irizarry, do you have doubts as to
5 Mr. Montero's competence to plead?

6 MS. IRIZARRY: No, Your Honor.

7 THE COURT: Mr. Gajewski, do you have any doubts?

8 MR. GAJEWSKI: No, Your Honor.

9 THE COURT: Based on his answers to my questions
10 and his appropriate demeanor, I find Defendant Angel
11 Montero-De La Cruz to be competent to enter his plea of
12 guilty.

13 Mr. Montero, did you receive a copy of the
14 indictment that's pending against you?

15 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

16 THE COURT: Did you discuss the charges in the
17 indictment with your attorney, with Ms. Irizarry?

18 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

19 THE COURT: Did you discuss your decision to plead
20 guilty with Ms. Irizarry?

21 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

22 THE COURT: Are you fully satisfied with the
23 counsel, representation and advice given to you by
24 Ms. Irizarry?

25 DEFENDANT MONTERO-DE LA CRUZ: That is correct.

1 THE COURT: Mr. Montero, when you were arrested and
2 you were brought to court, you went before another judge, and
3 at that time you pled not guilty to the charges.

4 Do you remember that?

5 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

6 THE COURT: Do you understand that you can maintain
7 that plea of not guilty if you wanted to?

8 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir, I
9 understand.

10 THE COURT: Do you understand that if you were to
11 maintain a plea of not guilty, you would then have the right
12 to a trial by jury?

13 DEFENDANT MONTERO-DE LA CRUZ: Yes.

14 THE COURT: Do you understand that at the trial you
15 would be presumed to be innocent?

16 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

17 THE COURT: Do you understand that it's the
18 Government that has to prove that you are guilty with
19 competent evidence and beyond a reasonable doubt?

20 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

21 THE COURT: Do you understand that at the trial
22 your attorney would be with you at all times to help you with
23 your defense?

24 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

25 THE COURT: And that you also would have the right

1 to see every witness that would come to the trial to testify
2 and listen to every witness' testimony.

3 Do you understand that?

4 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

5 THE COURT: And that you also would have the right
6 to have those witnesses cross-examined as part of your
7 defense.

8 Do you understand that?

9 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

10 THE COURT: And that you also would have the right
11 not to testify at the trial, or even present any evidence,
12 unless you voluntarily would want to do so as part of your
13 defense.

14 Do you understand that?

15 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

16 THE COURT: And that you also would have the right
17 to have witnesses come to the trial to testify on your behalf
18 as part of your defense, if necessary, by Court order.

19 Do you understand that?

20 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

21 THE COURT: Do you understand that if you were to
22 decide not to testify at the trial, or even present any
23 evidence, that cannot be used against you?

24 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

25 THE COURT: Do you understand that by entering a

1 plea of guilty, if I accept your plea, there will not be a
2 trial?

3 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

4 THE COURT: Do you understand that you will have
5 waived or given up your right to a trial and those other
6 rights that are associated with the trial that I just
7 mentioned to you?

8 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

9 THE COURT: Do you understand that by entering a
10 plea of guilty, you also waive or give up your right not to
11 incriminate yourself?

12 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

13 THE COURT: And reason for that waiver is because I
14 have to ask you questions about what you did in order for me
15 to be satisfied that you are guilty.

16 Do you understand that?

17 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

18 THE COURT: Do you understand that you will have to
19 acknowledge your guilt?

20 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

21 THE COURT: Mr. Montero, are you a citizen of the
22 United States?

23 DEFENDANT MONTERO-DE LA CRUZ: No, sir.

24 THE COURT: Do you understand that the offenses to
25 which you are pleading guilty -- Counts One, Two and Three of

1 the indictment -- are felony offenses?

2 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

3 THE COURT: Do you understand that if I accept your
4 plea, you will be adjudged guilty of those felony offenses?

5 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

6 THE COURT: Mr. Montero, you are charged in
7 Count One of the indictment with conspiracy to possess
8 controlled substances aboard a vessel subject to the
9 jurisdiction of the United States, in that, beginning on a
10 date that's not known but that was no later than on or about
11 December 11th through 12th, 2017, on the high seas, and
12 elsewhere, within the jurisdiction of this court, you, and
13 two other Defendants, knowingly and intentionally combined,
14 conspired, confederated and agreed, together with each other,
15 and with other persons, to possess with intent to distribute
16 5 kilograms or more of a mixture or substance containing a
17 detectable amount of cocaine on board a vessel subject to the
18 jurisdiction of the United States, which was a vessel without
19 nationality. Puerto Rico was the first point of entry where
20 you entered the United States following the commission of
21 that offense.

22 As to Count One of the indictment, Mr. Montero, is
23 that what you did?

24 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

25 THE COURT: You are also charged in Count Two of

1 the indictment with possession of a controlled substance on
2 board a vessel subject to the jurisdiction of the United
3 States, and with aiding and abetting others to do that, in
4 that, on or about December 11 to 12, 2017, on the high seas,
5 elsewhere, and within the jurisdiction this Court, you and
6 two other Defendants, aided and abetted by each other, and
7 with other persons, knowingly and intentionally possessed
8 with intent to distribute 5 kilograms or more of a mixture or
9 substance containing a detectable amount of cocaine on board
10 a vessel subject to the jurisdiction of the United States,
11 which was a vessel without nationality. Puerto Rico was the
12 first point of entry where you entered the United States
13 following the commission of that offense.

14 As to Count Two, Mr. Montero, is that what you did?

15 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

16 THE COURT: And you are also charged in Count Three
17 with conspiracy to import a controlled substance, in that,
18 beginning on a date that's not known but that was no later
19 than on or about December 11 to 12, 2017, from the Dominican
20 Republic, you and two other persons, Defendants,
21 intentionally and knowingly combined, conspired, agreed with
22 other persons, known and unknown to the Grand Jury, to import
23 into the United States 5 kilograms or more of a mixture or
24 substance containing a detectable amount of cocaine.

25 As to Count Three of the indictment, Mr. Montero,

1 is that what you did?

2 DEFENDANT MONTERO-DE LA CRUZ: Can I ask something
3 to my attorney before I answer?

4 THE COURT: Of course.

5 (Whereupon, an off-the-record discussion was held
6 between the Defendant and the Defense counsel.)

7 DEFENDANT MONTERO-DE LA CRUZ: Okay. Yes, sir.

8 THE COURT: Are you pleading guilty to all those
9 three counts?

10 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

11 THE COURT: The maximum and minimum punishment that
12 the law provides for the offenses to which you want to plead
13 guilty is as follows, for each offense:

14 A minimum term of ten years and a maximum term of
15 life imprisonment, a fine of \$10 million, and a supervised
16 release term of at least five years, and a special monetary
17 assessment of \$100 for each count, for a total of \$300.

18 Ms. Irizarry, have you discussed and explained the
19 terms of supervised release to Mr. Montero?

20 MS. IRIZARRY: Yes, I have, Your Honor.

21 THE COURT: Mr. Montero, on the date that you are
22 sentenced, I will also impose upon you a term of supervised
23 release.

24 DEFENDANT MONTERO-DE LA CRUZ: Okay.

25 THE COURT: During that term, which will be and

1 enforced whenever you are in the United States, whether
2 legally or illegally, you will be under the supervision of a
3 probation officer, and you will have to comply with some
4 conditions that I will also impose upon you on the date that
5 you are sentenced.

6 If you violate any of those conditions or you don't
7 follow them, the probation officer will find out, and he or
8 she will tell me. And at that time we will have a hearing in
9 court, and depending on what happens at the hearing, I can
10 revoke your supervised release term and send you back to
11 prison.

12 Do you understand that?

13 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir, I
14 understand.

15 THE COURT: Mr. Montero, you do realize that after
16 you complete your imprisonment term, you will be deported
17 back to your country of origin?

18 DEFENDANT MONTERO-DE LA CRUZ: Yes, I understand,
19 sir.

20 THE COURT: Do you understand all those serious
21 possible consequences of your plea of guilty?

22 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

23 THE COURT: Do you understand that sentencing
24 within the sentencing guidelines is a matter for the Court to
25 decide?

1 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir, I
2 understand.

3 THE COURT: Have you and Ms. Irizarry talked about
4 how the sentencing guidelines might apply to your case?

5 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

6 THE COURT: Do you understand that I won't be able
7 to determine what the guideline sentence for your case will
8 be until after I receive a completed pre-sentence
9 investigation report prepared by the probation officer?

10 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

11 THE COURT: Do you understand that the sentence
12 that I may impose upon you may be different from any estimate
13 that Ms. Irizarry may have already given you and even
14 different from whatever recommendation of sentence I receive
15 at the sentencing date by either Ms. Irizarry or from the
16 Government?

17 Do you understand that?

18 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir, I
19 understand.

20 THE COURT: Do you understand that the sentence
21 that I may impose upon you may be affected by your criminal
22 history?

23 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

24 THE COURT: Do you understand that even after your
25 sentencing guideline range has been determined, I can in

1 circumstances depart from those guidelines and impose a
2 sentence on you that is more severe than the sentence called
3 for by the guidelines?

4 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

5 THE COURT: And the reason I say "more severe" is
6 because I cannot sentence you to anything less than 10 years.

7 Do you understand that by law I can't do that?

8 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

9 THE COURT: Do you understand that there is no
10 parole in the Federal system?

11 DEFENDANT MONTERO-DE LA CRUZ: I understand.

12 THE COURT: Do you understand that if I do reject
13 any sentencing recommendation made by either your attorney or
14 by the Government that is either more severe or less severe
15 than any sentence you may anticipate, I won't be able to
16 allow you to withdraw your plea of guilty?

17 Do you understand that?

18 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir, I
19 understand.

20 THE COURT: Are you pleading guilty because
21 someones forced you to change your plea?

22 DEFENDANT MONTERO-DE LA CRUZ: No, sir.

23 THE COURT: Is your plea a completely voluntary
24 plea, on your own behalf?

25 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

1 THE COURT: Before we go any further, Mr. Gajewski,
2 does the safety valve apply to this case?

3 MR. GAJEWSKI: Your Honor, it's the Government's
4 position that the safety valve does not apply to the Title 46
5 case.

6 THE COURT: Ms. Irizarry.

7 MS. IRIZARRY: Yes, Your Honor. We would like to
8 just clarify a situation. The Court has just stated that the
9 Court cannot go under --

10 THE COURT: That's why I ask him.

11 MS. IRIZARRY: Exactly.

12 But the Court has stated that "I cannot go under
13 the 10 years." I just want the record to be clear that we
14 understand that, yes, the Court can go under the 10 years in
15 one of two things occurring, the safety valve or a
16 cooperation. So we understand that the statement that "the
17 Court cannot sentence you under 10 years" would be a
18 misstatement in this present case.

19 THE COURT: All right.

20 Mr. Montero -- well, first of all, Ms. Irizarry,
21 have you explained the safety valve to Mr. Montero?

22 MS. IRIZARRY: I have, Your Honor.

23 THE COURT: Okay.

24 Mr. Montero, if you do what we call the safety
25 valve, or if you cooperate with the Government and give the

1 Government information that substantially helps them, then I
2 may sentence you to less than 10 years.

3 Do you understand that?

4 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir. I offered
5 myself to clarify the case to the Prosecutor.

6 THE COURT: Okay. So if the Prosecutor accepts
7 your safety valve, or if the Prosecutor accepts that you have
8 made substantial cooperation with it, then -- for example, in
9 the safety valve, I can -- in both cases I can sentence you
10 to less than 10 years. But if you -- under cooperation, the
11 Government has to request that I sentence you to less than
12 10 years.

13 Do you understand that?

14 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir, I
15 understand.

16 MS. IRIZARRY: Your Honor, if I may clarify the
17 record. We understand that the Court is the one who
18 determines if he complies with the safety valve. It's not
19 the Prosecutor.

20 THE COURT: No, no. That's why I said "under
21 cooperation" it's only under a Government's motion. Not
22 under safety valve. I am clear on that.

23 MS. IRIZARRY: Thank you, Your Honor.

24 THE COURT: Now, Mr. Gajewski, would you please
25 give a brief explanation of the theory to be presented to

1 prove Mr. Montero-De La Cruz guilty if a trial were to be
2 held.

3 MR. GAJEWSKI: Yes, Your Honor.

4 On December 11, 2017, the U.S. Coast Guard detected
5 a suspect vessel traveling on a southwest course with three
6 persons on board approximately 50 nautical miles north of
7 Fajardo, Puerto Rico.

8 The Coast Guard intercepted the suspect vessel,
9 conducted a lawful boarding, and found three person on board,
10 one of which was Defendant Angel Montero-De La Cruz.

11 The boarding revealed 53 bales of suspected
12 cocaine.

13 The three persons on board the vessel, as well as
14 the suspected cocaine, were taken to Puerto Rico, which was
15 the first port of entry.

16 The suspected narcotics were subjected to forensic
17 testing by a Drug Enforcement Agency chemist who confirmed
18 the substance was cocaine and calculated a total net weight
19 of 1,051 kilograms.

20 Between December 11th and 12th, 2017, from the
21 country of Dominican Republic, the Defendant intentionally
22 and knowingly combined, conspired, and agreed with
23 co-Defendants to import into the United States 5 kilograms or
24 more of a mixture or substance containing a detectable amount
25 of cocaine.

1 Had the United States proceeded to trial, it would
2 have presented testimony of law enforcement agents, expert
3 testimony from a chemist, documentary evidence, a video, and
4 physical evidence, including the seized narcotics, to prove
5 Defendant is guilty beyond a reasonable doubt.

6 Discovery was provided to the Defense in a timely
7 manner.

8 THE COURT: Mr. Montero, do you agree with the
9 Government's version that you just heard?

10 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

11 THE COURT: Is that what you did?

12 DEFENDANT MONTERO-DE LA CRUZ: One moment, please.

13 (Whereupon, an off-the-record discussion was held
14 between the Defendant and Defense Counsel.)

15 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir, I
16 understand.

17 THE COURT: Do you understand that that is what you
18 did?

19 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

20 THE COURT: Do you still want to plead guilty?

21 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir.

22 THE COURT: Mr. Montero-De La Cruz, how do you
23 plead to the charges before the Court, guilty or not guilty?

24 DEFENDANT MONTERO-DE LA CRUZ: Guilty, sir.

25 THE COURT: It's the finding of the Court in the

1 case of the United States versus Angel Montero-De La Cruz
2 that Mr. Montero-De La Cruz is fully competent and capable of
3 entering an informed plea, that he is aware of the nature of
4 the charges and the consequences of his plea, and that his
5 plea of guilty is knowing and voluntary someone, supported by
6 an independent basis in fact containing each of the essential
7 elements of the offense.

8 Mr. Montero-De La Cruz's plea is, therefore,
9 accepted, and he is now adjudged guilty of that offense.

10 The Court orders a pre-sentence investigation
11 report to be prepared by the probation officer to assist the
12 Court in sentencing.

13 Mr. Montero, it's very important that you cooperate
14 with the probation officer when he or she is preparing this
15 report.

16 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir, I
17 understand.

18 THE COURT: Ms. Irizarry may accompany you during
19 and help you with your participation with the probation
20 officer assigned to your case.

21 Do you understand that?

22 DEFENDANT MONTERO-DE LA CRUZ: Yes, sir, I
23 understand.

24 THE COURT: May I have a sentencing date, please.

25 THE CLERK: June 28, 2018, at 9:00 a.m.

1 THE COURT: Sentence on June 28, 2018, at 9 o'clock
2 in the morning.

3 Is there anything else, Ms. Irizarry?

4 MS. IRIZARRY: Yes, Your Honor.

5 We would like the record to reflect that our
6 client, in writing, prior to today and today, has informed
7 the Court and the Government that he is interested in
8 participating in the safety valve interview. We understand
9 that he meets all the requirements and that it is his right
10 to be allowed to participate pursuant to the charge of
11 18 U.S.C. 952.

12 We are aware that the Government's intention is
13 that, in the other two charges, he is not eligible for the
14 safety valve. Nevertheless, he definitely -- there is no
15 objection that in the importation count he is eligible for
16 the safety valve. We request that the Court order the
17 Government to comply and conduct the interview.

18 THE COURT: Well, the Government can do its own
19 research and determine whether it applies or not.

20 What I would like, before the sentencing, is for
21 the Government, if it's not going to allow Mr. Montero to do
22 the safety valve, at last as to Count Three, to brief the
23 Court on that issue.

24 MR. GAJEWSKI: Yes, Your Honor.

25 THE COURT: And, Ms. Irizarry, you may brief the

1 Court also.

2 MS. IRIZARRY: Your Honor, and also, looking into
3 3553 factors, we are requesting that interview. We
4 understand that that is an interview which will allow the
5 Court to have a full picture as to all the 3553 factors that,
6 in fact, my client, for purposes of sentencing -- regardless
7 of the obligation or non-obligation of the safety valve,
8 there is the potential to go as low as 10 years, regardless
9 of the decision as if it will apply or not to the MDLEA
10 charges.

11 THE COURT: You may include that in your
12 briefing --

13 MR. GAJEWSKI: Thank you, Your Honor.

14 THE COURT: -- as to whether -- even if you are not
15 going to do the safety valve, whether you should at least
16 allow Mr. Montero-De La Cruz to be interviewed for the Court
17 to have sufficient evidence under the 3553(a) factors to
18 impose sentence.

19 And, Ms. Irizarry, you can brief the Court on that
20 also.

21 MS. IRIZARRY: Thank you, Your Honor.

22 MR. GAJEWSKI: Your Honor, is there a specific date
23 that you would like the briefing done by?

24 THE COURT: The sentence is on June 28th.

25 What about May 29th?

1 MR. GAJEWSKI: That works for the Government,
2 Your Honor.

3 THE COURT: Is there anything else?

4 MS. IRIZARRY: Nothing further, Your Honor.

5 MR. GAJEWSKI: Nothing from the Government,
6 Your Honor.

7 THE COURT: You are excused.

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9 (PROCEEDINGS ADJOURNED AT 3:50 P.M.)
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REPORTER'S CERTIFICATE

I, JOE REYNOSA, Official Court Reporter for the United States District Court for the District of Puerto Rico, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct computer-aided transcript of proceedings had in the within-entitled and numbered cause on the date herein set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

S/Joe Reynosa

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